TRAINER NOTES

INTRODUCTION

This training is designed to be a framework upon which the trainee can build. It is not intended to provide answers for every single situation which may theoretically arise. The emphasis here should be on participatory learning. We learn more by doing than sitting and listening to talking heads. Therefore, it is important that trainees take notes in their workbook in preparation for the final report. Encourage trainees to participate with flip charts, role playing, asking them questions, and having them answer questions. Some of the trainees will have had experience in investigations and their comments are valuable.

SUPPLIES

You will need the following equipment and supplies:

Laptop computer.

Projector.

VCR (optional)

Slides.

Flip chart.

Dark colored marker pens.

Code manual.

Investigative Techniques Workbook and Investigative Techniques Manual for each trainee.

Copies of the roles for the interview role playing.

These Trainer Notes.

GETTING STARTED

Check your list of supplies. See that you have enough for the number of trainees. Check out the room set-up. Check that each piece of equipment is working. Do you have a spare light for the projector?

You will follow one particular case throughout the training. It is a simple

"conflict of label" case with no hidden tricks. The goal is to go through the investigative process and get a brief written summary of the episode from each trainee at the end. Assign roles for the interview role playing as early beforehand as possible.

ROLES FOR THE PRACTICE INTERVIEWS.

There are three roles; Flerd Berfel, the grower and applicator; John Smith, the complainant, and; Anthony Goodbody, the San Rey County investigator. Assign the roles before the training session, if at all possible, to give the actors time to prepare. They should be instructed to read the role description, tell no lies, and create where necessary to fill in the details.

The Investigator.

You are Anthony Goodbody, an experienced county biologist who has been recently assigned to Pesticide Use Enforcement. You do not know this grower very well. You are ambitious and want to get on in the department. You hope to get more experience with ACP's so that you will be promoted. The PUE deputy, played here by the trainer, has given you this assignment assuming that you have been trained in investigations. This is what you were told.

Dolly Madison of San Rey County Health Department called the commissioner about a family, including two children, who got sick on the Fourth of July. The incident occurred at the corner of Wall and Almond Streets at about 10:30 p.m.

The Grower.

You are Flerd Berfel of Flerd Berfel Packing. You are a medium sized grower and quite successful. Your cousin is a member of the Board of Supervisors and your family has been farming this land for over 100 years. In the past few years your neighbors have prospered by selling off their land to development. You work very hard on your own almonds and as a packer. You waited until all the barbecues were over before you tackled a chronic pest problem in the home orchard at Wall

and Almond Streets. You cut the gallons of water per acre in a further effort to reduce the risk of drift. You think the Smith's may have eaten too many hot dogs that day.

The Complainant.

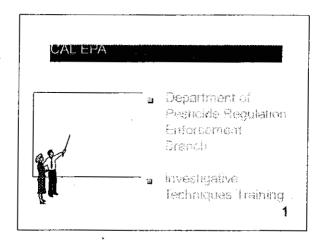
You are John Smith, you are working two jobs in order to make ends meet. You recently moved into the apartment across from the orchard because you and your wife, Jane, want to raise your children in a rural setting although you have very little knowledge of farming. You believe that the smell of the pesticide made your whole family sick. You are upset that one of the few times in the year you get to spend all day with your family was ruined by this incident.

The Pesticide Use Enforcement Deputy.

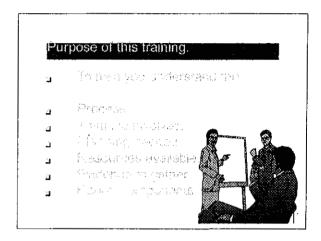
You are the PUE deputy and can answer any questions asked by the investigator. Note that there is insufficient information in the investigator's role description to start the investigation. There should first be a review of NOI's to establish what was sprayed, on what crop, and by whom. You happen to have this document and the Restricted Materials permit. Wait for the investigator to ask for them but do not let the proceedings begin without them.

PROGRAM

Introduce yourself and give a one line description of the training. If you are new to the audience give a brief bio by way of introduction. To break the ice have everyone introduce themselves and state their affiliation. Encourage them to give a short comment on their experience as appropriate and have them tell you what they would most like to learn in this class. This will help you tailor your comments to their needs.

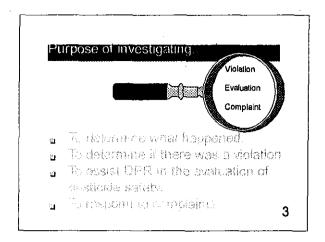


The slides were developed on Adobe Persuasion by a team of Senior Pesticide Use Specialists. They have been tested by district and headquarters staff but if you find areas of concern or difficulty, please contact Don Shephard at (916) 445-3884. We have incorporated many graphics in order to make the slides as interesting as possible. Training should be fun. If we cannot make it fun, we should at least make it interesting. Above all training should be a participatory process. Get them involved.



Start out by explaining the purpose of the training. What can they expect? We want to help them think through the process, to plan ahead for any possible enforcement action, and to assemble their resources carefully. Finally we want them to write a complete, concise report that can be understood by someone who is not familiar with the case. This point cannot be overemphasized. It helps investigators write a more complete report if they realize that the deputy, the commissioner, the hearing officer, and the WH&S doctors who review the report, were not there and may not be familiar with the area and its farming customs. These documents are also closely scrutinized by the Legislature, other government agencies and special interest groups reflecting vastly different points of view.

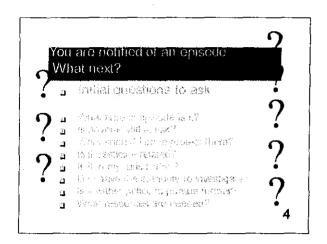
Before proceeding to slide 3 ask them what are the purposes of pesticide episode investigations. You should encourage them to write on the flip chart. Get them involved.



There are three purposes to investigations. One is to determine if there was a violation. This is the emphasis of the Enforcement Branch. Another is to find out what happened to assist DPR Worker Health and Safety Branch evaluate the pesticides involved and the effectiveness of the regulations. It helps to bear this in mind when writing the report. What information is critical for enforcement action and what information is critical to WH&S for their evaluation. WH&S compiles records of all illnesses and injuries related to pesticide exposure and retains them "forever'. They are used by legislators, registrants, and activists. They are also used in law suits other than those brought by the county. This process is part of the checks and balances used in California to ensure safe working conditions, to protect the environment, and to ensure food safety.

Investigators are also required to respond to complaints. See Section C for more details.

Point out that a negative finding is just as important as a positive finding, and should be carefully reported.



Slides 4 to 14

These slides should be treated as a unit. They examine the thinking process between the time the investigator is given the assignment and the start of the investigation. Begin by asking the trainees what they need to know before they go out the door. What questions should they ask first/ Again, have them write their ideas on a flip chart.

The questions on authority and policy have been added here realizing that they are background material and useful to know, but not necessarily asked every time. The following slides branch off from these questions.

Here are the questions. Did the trainees cover them all? Do they have some that could be added to the slides?

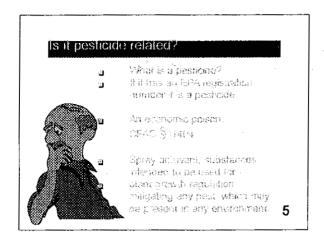
Is it pesticide related, if not the investigation ends. In order to answer this question we will have to ask others, see slides 5, 6, and 7. Is it in the investigator's jurisdiction? See slide 8.

The authority to investigate is very broadly written, emphasize here the need for tact and discretion. Slides 9, 10, and 11 cover this. What should they do if told to leave?

DPR policy is covered on slide 12.

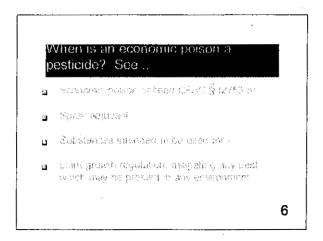
Slide 4.

Here we ask the questions. Did the trainees cover them all? If people are still at risk is a Cease and Desist Order required? Is it pesticide related? If not the investigation ends. Similarly, if it is not within the investigator's jurisdiction, the process ends. It is unlikely that a case would arise where the authority did not exist or where DPR policy restricted the investigation.



Slide 5

The simple answer is "If it is registered as a pesticide." A pesticide is defined as an economic poison. This is not particularly helpful. An economic poison is defined in the next slide.



Within this definition are two key phrases; the definition of the phrase :intended to be used" is cited on slide 7; and, the word "pest" is defined on slide 8.

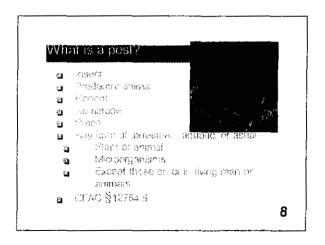
See Health and Safety Brief HSB 024 for more detail on antimicrobials. This letter deals with the question "What is an antimicrobial and what is not?"

When is an unregistered economic poison a pesticide?

- Unlawful to dse an unregistered pesticide. CFAC §12995.
- Intended to be used 300R §6145
- Unregistered Products 3COR §6301

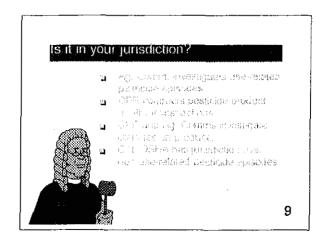
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If the material is not registered as a pesticide the question "Is it a pesticide?" becomes trickier. Go through the sections which deal with this but don't dwell too long on the subject. It is murky at best, especially 3CCR 6301



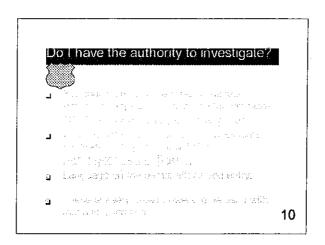
Slide 8.

Defines what is and what is not a pest. The notable exception is organisms on or in living man or animals. Materials used for these purposes are by this definition not used on pests and therefore they are not pesticides but medicines.



Obviously, if it is not a pesticide we do not have jurisdiction. This slide further divides up the enforcement pie citing the agreements and MOU's involved.

Give some examples. Non-priority episodes at manufacturers are covered by OSHA. Priority episodes, wherever they may occur, are handled by the Commissioners under an MOU with US EPA. Actual use of pesticides is under DPR and CAC jurisdiction.

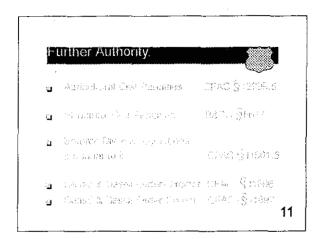


Slides 10, 11, and 12 deal with the authority to do the job.

Investigators should have the confidence of knowing that they have broad powers to investigate pesticide related episodes. However, tact and discretion should be used. Ask what they should do if the grower gets irate and orders them off the land. Remember that part of the function is to assess if there is a problem with the pesticide in question. It is important to gain the grower's cooperation in this matter. Cooperation is best achieved with a professional attitude.

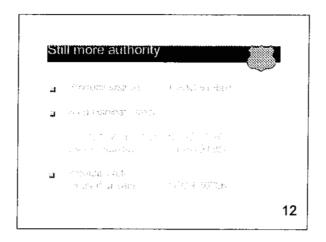
The language on the Restricted Materials Permit, which the grower signed, and may therefore have more weight with a reluctant grower, is in boldface type on the permit in the case study. Care should be taken, especially in personal residences. If told to leave, "When in doubt get out." is a good motto. The commissioner can decide on further action in this case.

The sections covered should be recorded in the workbook to aid the trainees later.



Slide 11

Trainees should also record the further authority sections listed on this slide and the next. This slide is given for reference purposes only. There is no need to dwell on the subject unless questions arise. Note that Division 6 deals with licensing and certification.



Trainees need to know that there is authority to seize produce which is suspected of having illegal residue.

Stop harvest orders may be issued if pre-harvest intervals are not complied with. Stop harvest orders may also be issued if excessive residue is found.

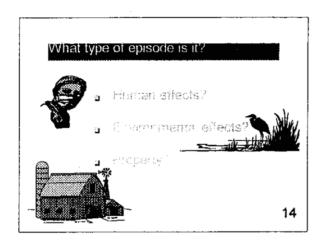
Commissioner may require employer to prohibit the entry of employees into unsafe conditions due to pesticides or their break-down products.

DPR Paicy

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DPR policy is listed here as an overall guide for new inspectors. You should emphasize the words "all complaints". Note that investigations of antimicrobials and dermatitis cases may be conducted over the phone, nevertheless these episodes are still investigated.

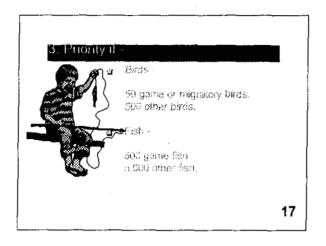


Slides 14, 15, & 16 deal with the criteria for priority episodes.

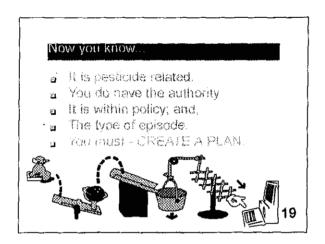
What must be done if it is a priority episode? Notify DPR immediately.

Get a priority transmittal number and memo. Complete the investigation within 30 days. All available medical records are required. The Senior Pesticide Use Specialist sends a closing letter to US EPA summarizing the CAC report.

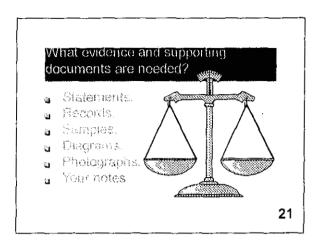
Slide 14 gives the three types of episode.



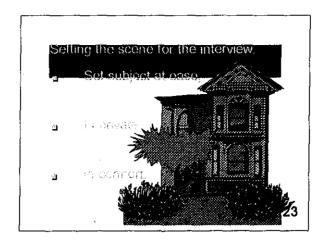
The bird and fish criteria.



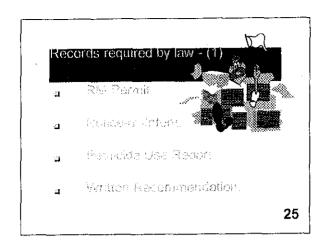
This is a transition slide. It recaps the previous questions and leads into the next. Emphasis is on planning before the investigator goes out the door.



Were all these types of evidence brought out? Cover them all.



Setting up the interview. Emphasize that it is not an adversarial role. Remember the purposes of the investigation which include protecting others from the same type of episode. Care and time should be taken to set up interviews. This impresses the interviewee with the significance of the situation.



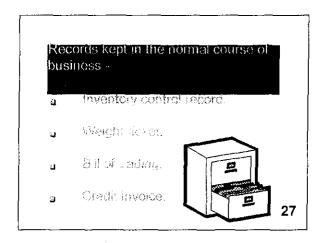
Slides 25 to 27 deal with records.

Slides 24 and 25 Records required by law.

In obtaining records such as the invoice of a pesticide sale, it is important that the inspector not talk freely about the purpose of the evidence.

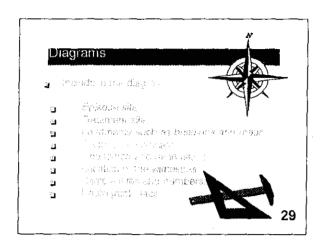
Grower REI records - reentry interval records 3CCR 6778.

Notice of Completion is 3CCR 6619
This is a good time to talk about the presumption of innocence and the right to due process.



Records kept in the normal course of business.

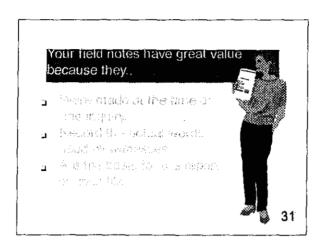
The credit invoice refers to the document used to show that pesticides were returned to the dealer which is evidence that they were NOT used.



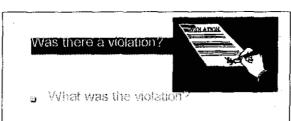
Slides 29 & 30 Diagrams and photographic evidence.

These may directly present evidence of an illegal situation. It helps others who have not visited the episode site to visualize the situation if there are graphic images presented. These two forms of evidence are not used as extensively as they could be.

Consider recording the following on the episode diagram. Row orientation in the field, wind direction, application pattern and direction. Again emphasize the need to help someone who was not there understand what happened.



The investigator's episode report is only as good as the field notes taken at the time of the investigation. There is typically an extended time lapse between the investigation and the enforcement action partly because of the requirements of due process. Some agencies destroy the field notes once the final report is written to avoid discrepancies, no matter how small, which can be used to discredit the investigation.



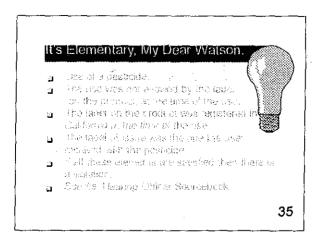
- Vyhat section or sections were violated?
- Ooes the evidence support the violation?

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Slides 33 to 36 deal with the violation.

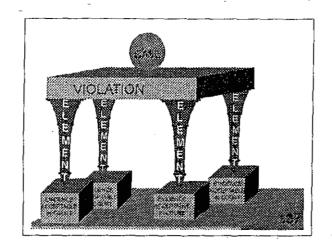
Slide 33.

The first question is crucial. Was there a violation? What sections are most appropriate? And can it be proven?



Discuss the results given on this slide and compare them with the ones written in the work books. There are several ways of reducing a section to its elements. Some people are more apt to break it into separate phrases. This analysis comes from the "Hearing Officers Source Book."

Note that the proof of California registration is the "LABELING ACCEPTABLE" stamp at the top right hand corner of the Omite and Guthion labels in the document section. Labels taken from the site by the inspector are proof of the "delivered with the pesticide" element. Labels taken from CAC files do not prove either element. Investigators need to cross-check the "delivered" label with the "registered" label.



This is a conceptual graphic of the requirements of a case.

Layer 1 shows the table top

Layers 2,3,4, and 5 show that the table needs legs so that it stands up.

Layers 6,7,8, and 9 show that each leg must be level to the floor so that the table does not wobble.

Layer 10 shows that if a table has all four legs which are evenly supported, the ball stays on the table.

The analogy follows.

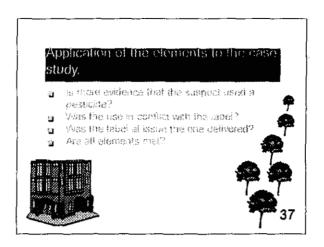
Layer 11 is the violated section.

Layers 12, 13, 14, and 15 show that each of the elements of the section must be satisfied before there is a violation.

Layers 16, 17, 18, and 19 show that each element must be supported by at least one piece of evidence, acceptable in a court of law, in order for there to be a case.

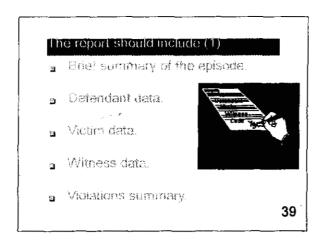
Absent one leg, or element, there is no violation.

Absent supporting evidence for one element, there is not a proven case.



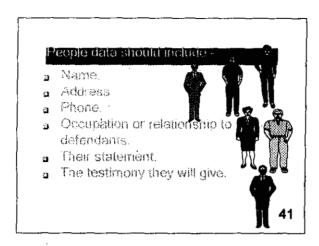
Here we pursue the specific case under study. It is important to have the group discuss the elements and decide whether there is a violation or not. The evidence they need includes the documentation in the work books as well as their notes from the interviews.

This is a group exercise. Break the class into groups of three or four to discuss the issue. Based on a similar case, this information led to an ACP and a fine.

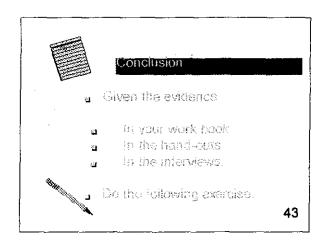


Slides 39 & 40.

Go over the contents of the report emphasizing the importance of each item to a reviewer who has not seen the episode site, but who has the responsibility of passing judgement on the situation.



The players in the investigation must be fully and correctly identified. You should discuss why this is so in terms of due process.



Now is the time to see how well the training went. Have the trainees go through the exercise. It is not so much a test of the individual trainee but a measure of how well this training package is designed and delivered.

On the list of evidence, designate whether each item is Enforcement or Worker Health and Safety related, or both. On the elements form, list each piece of evidence or document which supports each element. Write a brief summary of the violation. What action violated the law? Write a brief summary of the episode. What happened?

These exercises should not take more than 30 minutes or so. If there are questions encourage trainees to find the answers in the evidence. It is not necessary to write a complete detailed report of the investigation, rather an outline of the basic steps. Clarity and brevity are desired.

The list of evidence form should be completed first.

The elements, evidence, inference form is next.

Finally, on duplicated sheets of pages 12 & 13 of the Work book have them write brief summaries. Emphasize the need for brevity and clarity.